

FREDERICK J. DUGAN  
 BY HIS COMMITTEE,  
 VS.  
 JOHN S. HOLLINS AND OTHERS.

} DECEMBER TERM, 1853.

[CONSTRUCTION OF WILL—CONTRIBUTION—LEGACIES.]

- A TESTATOR by his will, executed in 1832, in order to place his sons upon an equality with his daughters, gave to each a pecuniary legacy to be paid by his executors "by the sale of his bank or other stocks." HELD—
- That this equality had reference to the state of facts existing at the date of his will, and no subsequent fluctuation in the value of the property which the testator may have previously given his children can influence this bequest, either to diminish or increase it.
- A gift of a house to one of his sons subsequently to the date of the will, is not an ademption, *pro tanto*, of the pecuniary legacy given by the will; one of the exceptions to presumptive ademption is where the testamentary provision and the subsequent advancement are not *ejusdem generis*.
- These legacies to the sons are payable out of the personal estate alone, and that being insufficient, they have no right to resort to the real estate in the hands of the devisee.
- A testator directed "his funeral expenses and debts to be paid out of whatever part of his estate his executors shall think proper." HELD—That if this clause confers upon the executors the power to sell the real estate, it only authorizes them to do so for the purpose of paying funeral charges and debts.
- The real estate is never charged with the payment of legacies, unless the intention so to charge it is expressly declared, or is fairly and plainly to be inferred from the terms of the will.
- A testator declared by his will, that if any claim was made against his estate on account of certain notes drawn by him in favor of his daughters or their husbands, his executors should charge the sums paid by his estate on account thereof to his daughters. These notes the testator paid in his lifetime, and lived more than two years thereafter without changing his will. HELD, that the provision made in his will for his daughters could not be diminished on account of the payment of these notes.
- At common law upon partition between coparceners there is an implied warranty that if either loses any of his share by eviction, on account of defect of title in the ancestor, the party evicted may enter upon the others and defeat the partition, or by proper proceedings, may obtain recompense for the part lost.
- A deed of partition was executed between several parties without covenants, and the portion assigned to one was made responsible for the payment of a decree against the ancestor. HELD—That he had a right to call upon the other parties in chancery, to contribute their proportions of the money paid by him in discharge of this decree.